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No. 86-435

SUPREME COURT OF THE UNITED STATES

October Term, 1986

STOWE-WOODWARD COMPANY,

Petitioner,

vs.

CARL W. VIOCK, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI To the Ohio Supreme Court

---

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EDITOR'S NOTE

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No. 86-435

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This Court should decline the invitation for a writ of certiorari.

STATEMENT OF THE CASE

In January 1976, Viock was hospitalized for over three (3) weeks with a serious lung injury as the result of a workplace chemical exposure which almost

took his life. Viock returned to work that May and was placed in the same work environment by his employer.

Viock showed signs that the chemicals were continuing to injure him. Concurrently, the workers' union representatives made repeated requests to have his area of employment ventilated. Stowe-Woodward Company essentially ignored the request.

Finally, in May, 1981, Stowe-Woodward Company requested that Viock be examined by a company physician. The examining physician concluded that Viock's condition had deteriorated to the point where Viock could no longer return to his job at all. Accordingly, on June 1, 1981, Viock, age forty-two (42), was fired. With a family of four (4) children and a wife, he was left to live on workers' compensation benefits of about seven thousand five hundred dollars ($7,500.00) per year.

His medical condition, which included massive scarring of the air sacs of his lungs, necessitated constant dependency on a portable oxygen supply system during waking hours. Viock became totally disabled and unemployable.

Viock filed suit alleging his employer intentionally and knowingly exposed him to dangerous chemicals resulting in his massive injuries. Under Ohio law, the employer is not protected under the Workers' Compensation Act for intentional torts.

This case was tried from May 14, 1984, until June 6, 1984. A judgment entry was filed by the judge approving the unanimous jury verdict on June 26, 1984.

The case was appealed to the Court of Appeals of Erie County, Ohio, which affirmed the judgment, with minor

modification, on March 14, 1986. The cause was appealed to the Ohio Supreme Court, which refused certiorari on July 30, 1986. A motion for reconsideration was denied on September 10, 1986.

The appellant then filed a petition for writ of certiorari with this Honorable Court on September 16, 1986.

I. THE OHIO COURT SYSTEM

Ohio has a court system which is basically like the federal court system. It consists of a three(3)-layer system: a nisi prius court of general jurisdiction--the common pleas court (and its divisions); an intermediate appellate court--the various courts of appeals; and the Supreme Court.

Article IV, Section 6, of the Ohio Constitution (Appendix 1) provided for courts of appeals in lieu of circuit

courts. Prior to that amendment, almost any litigation could be carried to the Ohio Supreme Court from the circuit courts. Consequently, the docket of the Supreme Court was severely over-taxed. The 1912 amendment, which was in effect until a re-submission to the voters in a 1944 election, attempted to solve the problem of the overburdened Supreme Court by making the jurisdiction of the courts of appeals final except in certain cases. (See 4 O. Jur. 3d 42, Appellate Review, Section 6.) The amendment was only partially successful in solving the Supreme Court's load. The Ohio Supreme Court repeatedly ruled that the state legislature had no control over the procedure by which it would review cases.

Article IV, Section 6, of the Ohio Constitution was modified in 1944 to empower the General Assembly to provide

by law for the appellate jurisdiction and procedure of the courts of appeals throughout the State. The amendment had as its major objectives the following:

1) the establishment of a uniform procedure throughout the State in cases appealed on law and fact; and

2) the simplification of litigation by providing for one (1) trial and one (1) review.

The 1944 amendment also granted the General Assembly the power to change the appellate jurisdiction of the courts of appeals.

The Supreme Court's power is well defined in 4 O. Jur. 3d 66, Appellate Review, Section 18:

> The 1968 Modern Courts Amendment to the Constitution provides that the Supreme Court shall have appellate jurisdiction in appeals from the Court of Appeals as a matter of right in the following: in cases originating in the Courts of Appeals; cases in which the death penalty has

> been affirmed; and cases involving questions arising under the Constitution of the United States or of Ohio. That 1968 amendment also provides, as did its 1912 predecessor, that the Supreme Court also has appellate jurisdiction in cases which that court itself determines are of public or great general interest, and in felony cases on leave first obtained. Under the amendments of 1912, 1944, and 1968, the Supreme Court is also given jurisdiction to review a judgment of a Court of Appeals which such Court of Appeals certifies is in conflict with a judgment of another Court of Appeals. With these exceptions the judgments of the Courts of Appeals are final. (Emphasis added; footnotes omitted.)

In considering the appellate jurisdiction of these three (3) layers of constitutionally created courts in Ohio, one must keep in mind the long established public policy in Ohio that there shall be one "one trial, one review."

In 4 O. Jur. 3d 873, Appellate Review, Section 483, we find hundreds of Ohio court citations which support the following:

> It has been a settled principle of Ohio Supreme Court practice for generations that an appeal brought to the Supreme Court as a matter of right on the claim that a constitutional question is involved will be dismissed if that court finds that no such question, or none which is debatable, is actually involved, or if the record discloses that the case can be disposed of without entering upon the consideration of any constitutional question, or that the constitutional question claimed to be involved in the case was not submitted to nor decided by the Court of Appeals. Indeed, this constant and venerable judicially developed tenet is implemented by the Supreme Court Rule of Practice that where an appeal as of right on the ground that the case involves a constitutional question is claimed, the Supreme Court will, sua sponte, consider the case as on a motion to dismiss the appeal as one not involving any substantial constitutional question, and will consider such motion to dismiss at the same time that it considers any motion to certify the record or motion for leave to appeal in the case. (Footnotes omitted.)

In the instant case, the appellant presented its case to a jury in a month-long trial. The Court of Appeals reviewed the jury findings and wrote a scholarly

fifty-four (54)-page opinion (Appellant's Petition, Appendix 2). The Ohio Supreme Court reviewed lengthy briefs pursuant to a motion for certiorari. It also considered a subsequent motion for reconsideration. It properly denied both.

The appellant never raised a single Federal or Ohio constitutional question in any of the state court proceedings, yet it argues that this Honorable Court should hear its case even though it did not qualify for review by the Ohio Supreme Court under Ohio law.

II. WHISLER V. DALLAS & MAVIS FORWARDING COMPANY, OHIO SUPREME COURT CASE NO. 85-1808, IS TOTALLY DISTINGUISHABLE FROM VIOCK V. STOWE-WOODWARD COMPANY.

The appellant argues that the Fourteenth Amendment of the United States Constitution entitles it to a review by the Ohio Supreme Court because that court

agreed to review the Whisler case. This argument is specious. The two (2) cases are not similar in any respect. A capsule review of the two (2) cases clearly establishes how feeble the appellant's position is.

In Whisler, a trial court granted a directed verdict for the defendant in an intentional tort action. The plaintiff appealed. The court of appeals reversed and remanded, determining factual issues required submission of the case to a jury. The Ohio Supreme Court agreed to review the issue of whether or not a jury question existed in that case. (See affidavit of plaintiff's attorney, Appendix 2.)

In the instant case, Viock presented evidence to a jury that his employer knowingly exposed him, over a long period of time, to dangerous chemicals even

though the employer knew his health was being destroyed. At age forty-two (42), his employer fired him after it destroyed his health and imposed a death sentence on him. (Doctors testified his life could be measured in less than five [5] years.) A unanimous jury found that the employer intentionally injured Carl Viock. They also found the employer acted maliciously, awarding compensatory and punitive damages. That cause was carefully reviewed by the Court of Appeals and affirmed.

The only similarity between the two (2) cases is the allegation in the complaint that an employer committed an intentional tort.

It is deceptive to suggest to this Honorable Court that the Ohio Supreme Court has agreed to review the intentional tort doctrine in the Whisler case. The

only non obiter dicta issue Whisler presents to the Ohio Supreme Court is whether or not that fact situation presents a jury question. The suggestion that Ohio's high court is going to redefine the intentional tort doctrine is sheer speculation, yet that speculation is the entire basis for the appellant's request for review by this Honorable Court.

The appellant suggests that one (1) Ohio Supreme Court judge (Justice Andy Douglas), in a dissent in Egan v. National Distillers Chemical Corp., 25 Ohio St.3d 176, 495 N.E. 2d 904 (1986), has suggested that a review of the intentional tort doctrine should take place. The appellant fails to mention that Justice Douglas recently wrote a decision as an appellate judge in which he suggested that the intentional tort doctrine should embrace

the lesser standard of proof which would require only the showing of willful and wanton conduct. Walker v. Mid-States Terminal, Inc., 17 Ohio App.3d 19, 471 N.E. 2d 1160 (1984).

Presently, Ohio law requires the plaintiff to prove intentional misconduct as he did in this cause. The appellant has repeatedly, unsuccessfully attempted to deceive each appellate court with the suggestion that the trial court instructed the jury on willful and wanton misconduct. That statement is false and has been rejected by each court.

III. THE OHIO SUPREME COURT IS A POLICY MAKING COURT.

With limited exceptions previously discussed, the Ohio Supreme Court is not required to review any cause which has been previously reviewed at the appellate

level. This is in keeping with the Ohio rule of one (1) trial and one (1) review.

The Ohio Supreme Court is empowered to review the issues it believes deserve the attention of the state's highest court. Justices vote on cases they wish to review as a part of their discretionary power. Issues which are well established and not in need of review are generally rejected by the court. This same principle applies to this Honorable Court.

It appears that the appellant wants the United States Supreme Court to dictate to the Ohio Supreme Court what cases it will hear. What type of order does it expect this Court to issue? Does appellant propose that this Honorable Court order the Ohio Supreme Court, if that court elects to review the definition of "intentional tort", to accept and review

every intentional tort case presented to it?

The absurdity of the appellant's position can be seen by this Court's own experience. This Court is not required to review every search and seizure case because it reviews one (1) or two (2). The function of the Supreme Court is to choose appropriate vehicles for the establishment of public policy to be implemented by the courts below. This Court should not be placed in a position where it is reviewing and dictating what cases each state supreme court will hear. That is exactly what the appellant is requesting.

In effect, the appellant wants this Court to remove the discretionary power from state supreme court judges--the same type of discretionary power which the justices of this Court routinely exercise.

The appellant suggests that a constitutional issue is involved under Section 1 of the Fourteenth Amendment. Apparently, the appellant, in this Court, adopts, for the first time, the position that the equal protection clause has application in this cause. Although it never previously suggested to any court that it was not receiving equal protection, it now contends that anytime a supreme court opts to review an arguably similar cause, all potentially affected litigants have an absolute constitutional right to an identical review.

The appellant bases its argument on three (3) cases which have no application. In Griffin v. Illinois, 351 U.S. 12 (1956), this Court ruled that an indigent had the right to have a transcript prepared so that he could effectively appeal a conviction. Since writs of error were permitted

in all criminal cases as a matter of right, it would be unconscionable not to allow indigent defendants to appeal solely because of their inability to pay.

In Douglas v. California, 372 U.S. 352 (1963), this Court held unconstitutional a statute which required an evicted tenant to post a bond of twice the potential rent loss which the landlord could experience during an accelerated litigation process as a condition precedent to filing a cross-claim against a landlord. This Court held the statute deprived the tenant of due process.

In the Matter of Kenneth Brown, 439 F.2d 47 (3d Cir. 1971), the court ruled that juveniles must have the same right to appeal convictions as adults, striking down a statute allowing adults to appeal as a matter of right but requiring juve-

niles to obtain leave of court for an appeal.

In each case cited by the appellant, the party seeking redress under the equal protection and due process clauses was denied an appeal or the right to litigate in the first instance. In the cited cases, the litigant was treated differently than other members of society for specific constitutional, impermissible reasons (i.e., juvenile status, indigency, tenant status). These cases have no application to the case at bar.

The Honorable Court has, in fact, clearly and conclusively ruled on the very question raised by the appellant in this cause. This Court, in a decision penned by Chief Justice Hughes, was confronted with two (2) cases out of the Ohio Court system. In Ohio ex rel. Bryant v. Akron Metrop. Pk. Dist., 281 U.S. 73

(1930), this Court had before it an allegation that the creation of a park board which, along with the probate court, had the power to appropriate property and levy tax assessments not in excess of one-tenth (1/10) of one (1) mill upon each dollar of assessed value of real property in the district in any one (1) year was an unconstitutional delegation of legislative power to the probate court and the non-elective park commissioners. Plaintiffs, in separate cases, sought injunctions in Akron and Cleveland against the park boards and the auditors. Akron and Cleveland are in different state court appellate districts. The trial courts found that statute constitutional and refused to enjoin the park board from functioning. The courts of appeals in both cases affirmed. The Ohio Supreme Court ruled, in a five (5)-to-two (2)

decision, that the statute was unconstitutional. However, at the time, Section 2 of Article IV of the Ohio Constitution provided that:

> No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the Court of Appeals declaring a law unconstitutional and void.

The appellants argued that this constitutional provision denied Ohio citizens equal protection and due process of law. They urged that if one (1) appellate court ruled that the park board scheme is unconstitutional while another court affirmed, completely opposite results would occur in the Ohio court system on the same issue.

This Court ruled that it would not consider matters which do not raise federal questions. The issue of whether there was an unconstitutional delegation

was not a federal question. Similarly, what cases the Ohio Supreme Court chooses to review is not a federal question. This court held that the right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance.

In the instant case, the appellant had a fair trial and a complete review by the appellate court. The Ohio Supreme Court refused to grant a second appeal.

The appellant suggests that it is possible that two (2) different litigants may have different results. It is obvious that court systems everywhere in America generate differing results for litigants on a daily basis. That is the nature of judicial systems. As this Court stated in Ohio, ex rel. Bryant:

> The equal protection provisions of the Federal Constitution do not require a state to adopt a unifying method of appeals which will insure

> to all litigants within the state the same decisions on particular questions which may arise.

Later, this Honorable Court addressed the issue directly raised by the appellants in this cause.

> The opportunity afforded to litigants in Ohio to contest all constitutional and other questions fully in the common pleas court and again in the court of appeals plainly satisfied the requirement of the Federal Constitution in this respect and the state was free to establish the limitation in question in relation to appeals to its supreme court in accordance with its views of state policy. 281 U.S. 73, 80. (Emphasis added.)

This Court discussed the discretionary power reposed in the Ohio court system. It stated that this Court would only be concerned with that system if it was clear that a violation of the Federal Constitution was apparent in that system.

> The provision of the State Constitution which is attacked is one operating uniformly throughout the entire state. The state has a wide discretion in respect to establishing its systems of courts and distributing

> their jurisdiction. It has been held by this court that the equal protection clause of the 14th Amendment is not violated by diversity in the jurisdiction of the several courts of a state as to subject-matter or finality of decision if all persons within the territorial limits of the respective jurisdiction of the state courts have an equal right in like cases under like circumstances to resort to them for redress. 281 U.S. 73, 81.

In the instant case, the appellant does not suggest that it has been denied an equal right to present its case in the court system. It is simply demanding that the Ohio Supreme Court hear its case after that Court chose not to do so. The appellant is asking that it be treated differently than the thousands of litigants who have been refused certiorari in the Ohio Supreme Court.

> It is thus well established that there is no requirement of the Federal Constitution that the state shall adopt a unifying method of appeals which will insure to all litigants within the state the same decisions on particular questions which may arise. Missouri v. Lewis,

supra; Pittsburgh, C. C. & St. L. R. Co. v. Backus, 154 U.S. 421, 427, 38 L. ed. 1031, 1036, 14 Sup. Ct. Rep. 1114; Mallett v. North Carolina, 181 U. S. 589, 597-599, 45 L. ed. 1015, 1019, 1020, 21 Sup. Ct. Rep. 730, 15 Am. Crim. Rep. 241. 281 U.S. 73, 81. (Emphasis added.)

It is clear that the appellant's argument is without merit. It does not raise a federal constitutional question. Furthermore, it is premised on the possibility that the Ohio Supreme Court might decide an issue which may have some remote bearing on the facts in the Viock case on some future date. It is clear that this Court only allows in cases involving actual, clear Federal Constitutional questions. The appellant has not pointed to any act by the Ohio Supreme Court which in any way violates its Federal or State Constitutional rights. It has simply indulged in wild speculation that the Ohio Supreme Court might decide a

case in the future which may have an affect on the 1984 judgment.

IV. THE APPELLANT NEVER ASSERTED A VIOLATION OF CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS OR THE EQUAL PROTECTION CLAUSE IN ANY STATE COURT.

The appellant cannot assert, for the first time in this Honorable Supreme Court, that it was denied equal protection or due process under the Federal Constitution. It was required to assert that position in the lower courts. It was never raised before in the Ohio courts because it is an unfounded proposition of law. It never urged upon the Ohio Supreme Court that it had a constitutional right to be heard. It now asks the highest court in the land to act as a court of first impression.

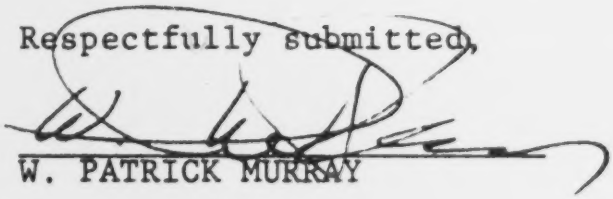
V. REQUEST FOR ACCELERATED DECISION.

The appellee respectfully requests this Court accelerate this cause and render judgment on whether or not it should be reviewed as soon as possible. The appellee strongly believes that this matter is not one for review by this Court. The certiorari petition constitutes nothing more than a delaying tactic by the appellant. This case deserves an early decision for humanitarian reasons. Appendix 3, an affidavit from appellant's attending physician, indicates that Carl Viock may be in the last few months of his life and that his condition is worsening.

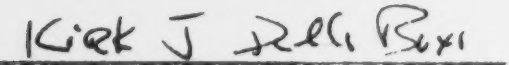
The appellee needs final resolution of this cause prior to his demise. It is his only chance to know that his family will be provided for posthumously. Carl

Viock deserves the right to die with peace of mind.

Respectfully submitted,



W. PATRICK MURRAY



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APPENDIX 1

CONSTITUTION OF OHIO
Article IV

§ 6 [Election of judges; compensation.]

(A)(1) The chief justice and the justices of the supreme court shall be elected by the electors of the state at large, for terms of not less than six years.

(2) The judges of the courts of appeals shall be elected by the electors of their respective appellate districts, for terms of not less than six years.

(3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or

division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located.

(4) Terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribed the ties and mode of their election.

(B) The judges of the supreme court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall at stated times, receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office. The compensation of all judges of the supreme court, except that of the chief justice, shall be the same. The compensation of all judges of the courts of appeals shall be the same. Common pleas judges and judges of

divisions thereof, and judges of all courts of record established by law shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States. All votes for any judge, for any elective office, except a judicial office, under the authority of this state, or of the United States. All votes for any judge, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people shall be void.

(C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years. Any voluntarily retired

judge, or any judge who is retired under this section, may be assigned with his consent, by the chief justice or acting chief justice of the supreme court to active duty as a judge and while so serving shall receive the established compensation for such office, computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled. Laws may be passed providing retirement benefits for judges. (Amended, effective No. 6, 1973; SJR No. 30. Adopted May 7, 1968. Former § 6 repealed and analogous provisions reenacted as § 3.)

APPENDIX 2

AFFIDAVIT OF CARL P. HIRSCH, JR.

Being first duly cautioned and sworn, the Affiant herein, Carl P. Hirsch, Jr., says that he is an Attorney at Law, having been admitted to practice by the California Supreme Court on December 18, 1974, the Ohio Supreme Court on April 22, 1976, and the U.S. Supreme Court on april 19, 1982. He represents Carolyn Whisler in an action for the wrongful death of Roy Wayne Whisler, now pending in the Ohio Supreme Court under Case No. 85-1808.

At trial, said case was taken from the jury upon the close of the Plaintiff's case on the issues of the election of remedies and intent. The Court of Appeals ruled and it has since been settled in Ohio that accepting worker's compensation

benefits does not constitute an election of remedies so as to preclude a common law tort action.

Therefore, the sole remaining issue in the Ohio Supreme Court action is whether or not a jury question is presented upon a showing of employer's prior knowledge of substantial certainty of injury.

Attached hereto and incorporated by reference herein are excerpts from that case record. (Trial Court entry pp 398, 399 and Court of Appeals decision pp 402-411).

Further Affiant sayeth not, upon his best information and belief.

9/17/86
DATE

/s/ Carl P. Hirsch, Jr.
P.O. Box 97
Chillicothe, OH 45601
(614) 773-3660

STATE OF OHIO, COUNTY OF ROSS, SS:

This date appeared before me the person known to me to be Carl P. Hirsch, Jr. and after being duly cautioned and sworn, who states that the foregoing is true and correct as he verily believes.

/s/ Linda L. Atwood
Notary Public

APPENDIX 3

Affidavit of Manohara Gupta, M.D.

(Filed July 1986)

Case No. 86-729

IN THE SUPREME COURT OF OHIO
Appeal from the Court of Appeals
for Erie County

CARL W. VIOCK, et al.,

Plaintiffs-Appellees,

vs.

STOWE-WOODWARD COMPANY,

Defendant-Appellant.

AFFIDAVIT OF MANOHARA GUPTA, M.D.

STATE OF OHIO)
ss:
COUNTY OF ERIE)

Manohara Gupta, M.D., being first duly sworn, deposes and says that he is a duly licensed cardiologist and internal medicine specialist.

Your affiant states that he has practiced medicine in the area of Sandusky, Ohio since 1978.

Your affiant states that he is actively treating Carl Viock, who has been a patient since 1980.

Your affiant states that Carl Viock has experienced significant cardiology difficulties as a result of a pulmonary pathology known as COPD and interstitial fibrosis. The pulmonary problems have caused the right side of Carl Viock's heart to enlarge.

Your affiant states that he has treated Carl Viock for an enlargement of the right side of his heart.

Your affiant states that Carl Viock's medical condition is terminal.

Your affiant states that with the pulmonary complications, along with the

cardiology problems, death is probably imminent for Carl Viock.

Your affiant states that in February of 1986, Carl Viock suffered a myocardial infarction and was hospitalized at the Firelands Community Hospital for the same. A copy of the hospital discharge summary is attached hereto and marked "Exhibit A".

Your affiant states that Carl Viock's life span must presently be measured in months.

Your affiant states that it is possible that Carl Viock will not survive more than one month and probable that he will not survive a period of more than six months.

Your affiant states that no known medical treatment can do anything to prolong his survival.

Further affiant sayeth not.

/s/ Manohara Gupta, M.D.

Sworn to before me and subscribed in my presence this 11th day of July, 1986.

/s/ Connie L. Jenkins
Notary Public

EXHIBIT A

DISCHARGE SUMMARY

FIRELANDS COMMUNITY HOSPITAL
Sandusky, Ohio

Patient No. 30897
Date Admitted: 2-16-86
Date Discharged: 2-23-86
Patient Name: VIOCK, Carl W.
Attending Physician: M. Gupta, M.D.

ADMITTING
DIAGNOSIS: Myocardial infarction secondary to coronary disease, chronic obstructive lung disease.

FINAL DIAGNOSIS:

Acute inferior wall myocardial infarction secondary to coronary disease and chronic obstructive pulmonary disease.

Chest x-ray showed no evidence of acute pulmonary pathology. Hgb. 16.9, Hct. 41.7, WBC 10,100, mono 9, lymph 32, seg 49. Electrolytes showed initial potassium of 3.4, CPK 102, LDH 166, SGOT 13. Second CPK was 1,037, LDH 259, SGOT 87. The last CPK was 70, LDH 173, SGOT 12. Theophylline level was 2.73 at initial examination. SMA 12 revealed BUN 13, glucose 135. total bilirubin 1.2. Repeat blood sugar was 110. Hgb. 15, pH 7.38, pCO2 38.6, pO2 89 with 2.5 liters of oxygen. Patient had some change in the LDH isoenzymes suggestive of

myocardial injury. Electrocardiogram initially showed sinus bradycardia, elevated ST T wave changes suggestive of underlying ischemia or injury. Serial electrocardiograms showed development of Q wave in the inferior leads, suggestive of inferior wall MI. Initially it was complicated with ventricular arrhythmias, which was controlled with Lidocaine. The Lidocaine was weaned off without any further problems.

HOSPITAL COURSE: Hospitalization with ICU, bed rest, oxygen, placed on Nitrobid capsules, nitroglycerin, Procardia, continued on his pulmonary medications including Theovent, Serax p.r.n.. After stabilizing the patient, he was transferred to a regular floor, ambulated, placed on cardiac rehabilitation. He had no further problems, no evidence of congestive failure or cardiac arrhythmias, no further symptoms. He was discharged on low cholesterol diet, activities, warning signs all explained to thepatient (sic) by cardiac rehabilitation. Nitrobid 6.5. mg, Procardia, K-lyte one daily, Theovent 250 b.i.d., Brethine 2.5 t.i.d., Bufferin one daily, nitroglycerin p.r.n.. To be seen within a week.

M. Gupta, M.D.

D 3-11-86 1313
T 3-21-86 dwe

cc: Dr. Gupta

CERTIFICATION

This is to certify that three copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari were served upon petitioner in the foregoing cause, by sending same by ordinary mail, with postage prepaid, on this 14th day of October, 1986, addressed as follows:

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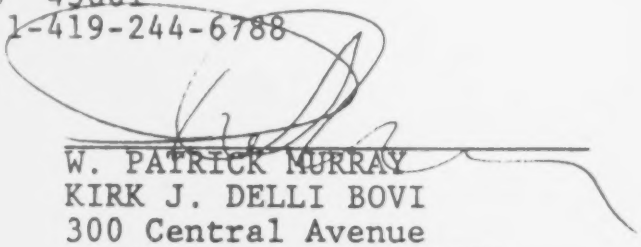

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